

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The petitioner knew her son's father for about six months. At that time he was twenty-two years old. He left

her when she was in the third month of her pregnancy with her son. During the six months that they dated, her son's father often hit her and left bruises on her arms and legs. At that time he was "into drugs." She never reported this abuse to the police nor received any medical care for any kind of injury.

3. Shortly after her son's birth, the petitioner gave his father a picture of him. Although he had a chance meeting with the petitioner and her son once, he has made no attempt to see the boy. The petitioner has not seen her son's father since December of 1996. She believes he moved to Boston, Massachusetts to take a job and has since gotten married.

4. The petitioner says that her son's father once threatened that he would "kill her" if she ever went after him for child support. However, she still does not "mind" going after him for child support because she thinks he should see her son. She expressed some fear that he might want to get custody of him since he has now married and might want to abduct him to get revenge. However, he has never made any such threat to her. She also expressed concern that he might hit his son or make fun of his language disabilities based upon her past history with him. The petitioner did not indicate that she has any real physical fear of her son's

father at present and says she requested the waiver because her mother, with whom she lives, was "forcing" her to do so because she feels the boy's father is unstable and wants nothing to do with him.

5. The petitioner has agreed in writing to cooperate with obtaining support from her son's father on two prior occasions in 1996 and 1998. (Each agreement was only good for six months.) She felt comfortable co-operating in the past because her two children have been protected by her brother. She feels that she is now protected by her mother.

6. Based on the above evidence offered by the petitioner, it cannot be found that she has substantiated that she or her son are reasonably expected to suffer serious emotional or physical harm if she is required to cooperate in obtaining child support payments.

ORDER

The decision of the Department is affirmed.

REASONS

Any person who receives ANFC automatically assigns her rights to support to the Department of Prevention, Assistance, Training and Health Access and is expected as a condition of

eligibility to cooperate in establishing paternity and collecting child support benefits unless she has "good cause" for failing to do so. W.A.M. 2331.32. "Good cause" is defined in the Department's regulations as follows:

. . . To show that cooperation may be against the best interests of the child, the applicant or recipient must provide evidence that cooperation in establishing parentage or pursuing support is reasonably anticipated to result in any one of the following:

1. Serious physical or emotional harm to the child for whom support is being sought.
2. Physical or emotional harm to the recipient parent or caretaker that is so serious it reduces his/her ability to care for the child adequately.

NOTE: Physical or emotional harm must be of a serious nature to justify a good cause finding.

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W.A.M. 2331.34 further delineates the type of evidence which must underlie a request for an exemption due to claimed emotional harm:

Whenever the waiver request is based in whole or in part upon the anticipation of emotional harm to the child, the recipient parent, or the caretaker, the present emotional state and health history of the individual subject to emotional harm must be considered as well as the extent of involvement of the child in the establishment of parentage or support enforcement activity to be undertaken. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment, that substantially affects the individual's functioning.

The Board, relying on Bootes v. Cmmr. of Penn. Dept. of Public Welfare, 439 A.2d 883, 885 (1982), has held that a determination of reasonable anticipation of harm under the above regulations is a factual decision which must be made on a "case by case basis on the weight, sufficiency and quality of the gathered evidence" and that the "final decision requires a subjective judgment on the part of the hearing examiner." See Fair Hearings No. 13,236 and 14,157. The Board has also held, based on a ruling by the federal Department of Health and Human Services (43 Fed. Reg. 2176, January 16, 1978) interpreting the federal regulation at 45 C.F.R. § 232.42 which sets forth the "good cause" exemption, that a sufficient level of severity of harm is met only "in those few extraordinary circumstances where the parent or child faces a risk so real that it would outweigh the emotional, physical and financial benefits of the child's receiving parental support." See Fair Hearing No. 14,157.

The finder of fact, then, is required to determine whether the physical and emotional harm alleged is proven based (1) on a reasonable likelihood that the non-custodial parent will take some action with regard to the child if support is pursued; (2) that the evidence shows that physical harm is likely to occur or that, based on a documented health

history of the child, the action is expected to cause emotional harm to the child; and (3) that the physical harm is serious and that the emotional harm substantially affects the child's ability to function. Only if these criteria are met can the custodial parent be released from cooperating in securing parental support for her child.

In this case, the petitioner had an undocumented but credible history of abuse with the child's father who has had no contact with the child since his birth. The evidence shows that the petitioner's objection to cooperating (if indeed she really has one apart from her mother's exhortations) lies in her fear of the unknown. These fears are not supported by any present evidence showing that the child's father is likely to take some action if he is pursued for child support or that the action will lead to serious emotional or physical harm. The Board has said repeatedly that even where there is a history of physical or emotional abuse when the parents were together, there must be present evidence that the initiation of child support collection activities is likely to cause serious harm now. Fair Hearing Nos. 11,649 and 12,863. Factors set forth in these decisions which militate against such a finding in this case are the passage of time since the abuse, the lack of contact between the parties and the

physical distance between the non-custodial parent and the child. In addition, the Board has made it clear that a fear that the non-custodial parent may try to obtain court-ordered contact with (or custody of) his child can never form the basis for a waiver because such requests are subject to review by the Court under a "best interests of the child" standard. Fair Hearing Nos. 13,038, 13,302, and 13,148.

The Department was correct under the state and federal regulations and guidelines and prior Board decisions in its denial of a request for a waiver and that denial must be upheld. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19. This decision is also consistent with the stated federal policy of not depriving children of their right to obtain child support without a very serious countervailing reason.

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